

STATE OF NORTH CAROLINA
JUSTICE
WAKE COUNTY

FILED

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JBM - PCR JUDGE
ROZIER

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IN THE GENERAL COURT OF
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, *et al.*)
Plaintiffs,)
)
v.) ORDER
)
Representative DAVID R. LEWIS,)
in his official capacity as Senior)
Chairman of the House Select)
Committee on Redistricting, et al.,)
Defendants.)

Brief Factual Background of the Hofeller Files

On February 13, 2019, Plaintiffs issued a third-party subpoena to Stephanie Hofeller, the daughter of the late mapmaker Dr. Thomas Hofeller, requesting documents relating to Dr. Hofeller's work on the 2017 legislative redistricting plans challenged in this case. In March of 2019, Ms. Hofeller produced four external hard drives and eighteen thumb drives of data that are now known as the "Hofeller files."

On June 15, 2019, Geographic Strategies LLC ("Geographic Strategies"), claiming to be the true owner of a substantial portion of these files, filed a motion seeking to protect its purportedly confidential and proprietary information by requesting that the Court designate all Hofeller files as "Highly Confidential" under the parties' existing April 5, 2019 Consent Protective Order. On July 12, 2019, the Court, in its discretion, granted in part and denied in part Geographic Strategies's requested

relief, designating the Hofeller files as “Confidential” and allowing Geographic Strategies a reasonable time to inspect the Hofeller files and assert specific claims of ownership or other rights to the Hofeller files. Geographic Strategies was ordered to provide the Court with an itemization of all files to which it claims a right or privilege. The itemization was to include the name of the file, the nature of the file, and the basis for the claim of ownership or claim of right so that the Court, upon receipt and consideration of the foregoing, could determine whether an ongoing protective order was warranted.

On August 30, 2019, Geographic Strategies submitted an itemization of files, along with a request that it be considered a producing party under the Consent Protective Order. On September 13, 2019, Plaintiffs submitted their objections to Geographic Strategies’s designations, objecting to designating as “Confidential” all but 950 of the files identified by Geographic Strategies.

Geographic Strategies’s Designations

Geographic Strategies’s itemization was divided into two Logs. Log 1 contains primarily map files and Log 2 contains standard documents. Geographic Strategies makes a claim to a total of 268,848 files—251,295 files from Log 1 and 17,553 files from Log 2. During its review of the files, Geographic Strategies observed that a number of files appeared to be “personal” in nature, i.e., related to members of the Hofeller family. It marked these 19,963 files as “personal” and included them in Log

2. Although it does not make a claim of ownership or other right to these files, it requests that they be designated as "Highly Confidential." Geographic Strategies also included in Log 2 an additional 1,682 files it identified as documents given to Dr. Hofeller by the Republican National Committee ("RNC") and another 91 that were given to him by the Republican State Leadership Committee ("RSLC").

After considering the parties' briefs, submissions, and arguments, and having reviewed the record proper, the Court, in its discretion, makes the following findings and conclusions:

950 Files to Which Plaintiffs Do Not Object

Plaintiffs do not object to designating as "Confidential" 950 of the files identified by Geographic Strategies. Accordingly, those files shall be designated "Confidential" per the parties' Consent Protective Order.

Files Reflecting Work Performed in Dr. Hofeller's or Mr. Oldham's Individual Capacities,

and Files that Pre-date the Existence of Geographic Strategies

Geographic Strategies argues that certain files reflecting work performed by Dr. Hofeller and Mr. Dale Oldham in their individual capacities are nonetheless property of Geographic Strategies because Dr. Hofeller and Mr. Oldham contributed their work to Geographic Strategies, and added it to a "data library" that is maintained by Geographic Strategies for use by Geographic Strategies and its clients. Essentially, Geographic Strategies argues that the data library represents its

creators' unique knowledge and talents, and is proprietary. Consequently, it argues, any information that was placed in the data library became part of the entity's proprietary information. At the same time, however, counsel for Geographic Strategies represented to the Court at the July 2, 2019, hearing that 35 files reflecting work performed in Dr. Hofeller's individual capacity pursuant to his contract with the North Carolina legislature was not done under the auspices of Geographic Strategies and Geographic Strategies does not claim any proprietary interest in those files.

The Court does not find that any information placed in the data library necessarily became proprietary or confidential. Public information, for example, did not become confidential or proprietary by virtue of being placed in the purportedly proprietary data library.

Geographic Strategies's conclusory statement that any files maintained in its data library are necessarily proprietary is not a sufficient legal basis for designating these files "Confidential." Therefore, in its discretion, the Court declines to designate as "Confidential" any files reflecting work that was not performed on behalf of Geographic Strategies, which includes work performed by Dr. Hofeller and Mr. Oldham in their individual capacities and files that pre-date the company's existence.

To that effect, the Court requests that Geographic Strategies indicate whether the following files reflect work performed on behalf of Geographic Strategies, as opposed to work performed in Dr. Hofeller's individual capacity, as alleged by Plaintiffs in their objections:

1. 16,915 files related to *Perez v. Abbott*, 5:11-cv-360 (W.D. Tex.) as identified by Plaintiffs in their objections;
2. 6,046 files related to work on the Ohio congressional plan as identified by Plaintiffs in their objections; and
3. 11,705 files related to work on the Florida congressional plan as identified by Plaintiffs in their objections.

Plaintiffs also argue that the 11,705 files related to the Florida congressional plan are public documents pursuant to Florida law and likewise, that the 6,046 files related to the Ohio congressional plan are public documents pursuant to Ohio law.

The Court refrains from concluding, at the moment, whether those documents are public by law, but notes that the Court does not have the authority to deem as “Confidential” documents that are public by law.

Files Marked Personal

Geographic Strategies does not assert an interest in the files it marked as “personal” and the Court declines to designate as “Highly Confidential” any of these files. Although Geographic Strategies may have marked these files in a good faith effort to protect the privacy of the Hofeller family, Geographic Strategies is not properly situated to seek this relief. Additionally, a number of the files appear to be spam email or advertisements, and likely do not warrant a designation of “Highly Confidential.”

Documents Lacking Substantiation That Work Was Performed for the RNC or RSLC; Documents Lacking Substantiation of Legitimate Privilege or Confidentiality Interest

There are 81 files in Log 1 and 215 files in Log 2 that were objected to by Plaintiffs solely on the basis that there was no substantiation of legitimate privilege or confidentiality interest. Similarly, there are 128,073 files in Log 1 and 7,355 in Log 2 that were objected to by Plaintiffs solely on the basis that there was no substantiation that work was performed for the RNC or RSLC.

While the Court appreciates the scale of this project and understands that the corresponding burden upon Geographic Strategies is great, the burden nonetheless lies with Geographic Strategies to make a showing of ownership or other right *sufficiently detailed* to allow the Court to ascertain the nature of the document and rule accordingly. The Logs provided by Geographic Strategies fail to provide sufficient information to rule upon these remaining 135,724 files. Geographic Strategies, for example, asserts that 251,295 files in Log 1 are "Attorney Work Product" but does not explain further how any of these files satisfy the requirements for invoking this privilege. The file source path information contained in the Logs and Mr. Oldham's 26 page affidavit (which provided general information about the Hofeller files) is not enough. The Court, in its discretion, is allowing Geographic Strategies another opportunity to submit information sufficient to determine the confidentiality of these 135,724 files. To that end, the Court is also requesting that it be provided electronic access to the 135,724 files.

As a final note, the Court finds that the Consent Protective Order was entered into by the parties to this case, and therefore is binding only upon those parties with

respect to this dispute. In other words, the Court does not have the authority to command that non-parties who are not subject to this Court's jurisdiction abide by the terms of the Consent Protective Order. Additionally, the Court has reviewed the terms of the Consent Protective Order and declines to deem Geographic Strategies a "producing party" per the terms of that order. Relatedly, to the extent that any Hofeller files have become available on the public domain, the Court has no authority to issue an order limiting the use of those files. Likewise, any files that are public by law (such as those relating to Dr. Hofeller's work in North Carolina) cannot be made confidential by an order of this Court.

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS as follows:

1. The following files are no longer subject to the protective order issued by this Court on July 12, 2019:
 - a. 38,646 files related to North Carolina which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;
 - b. 12,237 files related to Arizona which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;

- c. 10,350 files related to Virginia which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;
- d. 5,640 files related to Missouri which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;
- e. 635 files related to Nassau County which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;
- f. 1,334 files related to Nueces County which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;
- g. 7,178 files related to Galveston County which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;
- h. 4,946 files related to *In re: 2012 Legislative Districting*, No. 5-2012, (Md. Ct. App.) which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;
- i. 4,007 files related to *Moore v. Tennessee*, No. 120402-III (Tenn. Chancery Ct.) which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;

- j. 1,821 files related to *Mississippi State Conference of the NAACP v. Barbour*, 3:11-cv-159 (S.D. Miss.) which reflect work performed by Dr. Hofeller in his individual capacity, as identified by Plaintiffs in their objections;
 - k. 1,682 files identified by Geographic Strategies as documents given to Dr. Hofeller by the RNC and 91 files identified by Geographic Strategies as documents given to Dr. Hofeller by the RSLC; and
 - l. 19,963 files identified by Geographic Strategies as "personal."
2. The 950 files to which Plaintiffs did not object are hereby designated as "Confidential" in accordance with the parties' existing April 5, 2019, Consent Protective Order.
3. The Court requests that Geographic Strategies provide electronic access to the 135,724 files objected to by Plaintiffs as lacking substantiation that work was performed for the RNC or RSLC, and/or lacking substantiation of legitimate privilege or confidentiality interest. Geographic Strategies shall submit sufficient information regarding the basis of its claim of ownership or other right for each of these files to allow the Court, if appropriate, to grant Geographic Strategies its requested relief. Geographic Strategies shall submit this information to the Court and provide the Court access to these files by 5:00 p.m. EST on December 4, 2019. Plaintiffs may submit a response to information submitted by Geographic Strategies with respect to these files by 5:00 p.m. EST on December 18, 2019. The Court, upon receipt and

consideration of the foregoing, shall determine whether an ongoing protective order is warranted for these files. These files shall remain designated as "Confidential," in accordance with the parties' existing Consent Protective Order, until further order of the Court.

4. By 5:00 p.m. EST on December 4, 2019, Geographic Strategies shall submit to the Court sufficient information indicating whether the following files reflect work performed on behalf of Geographic Strategies:
 - a. 16,915 files related to *Perez v. Abbott*, 5:11-cv-360 (W.D. Tex.), as identified by Plaintiffs in their objections;
 - b. 6,046 files related to work on the Ohio congressional plan, as identified by Plaintiffs in their objections; and
 - c. 11,705 files related to work on the Florida congressional plan, as identified by Plaintiffs in their objections.

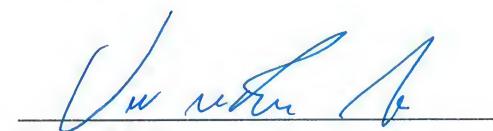
Plaintiffs may submit a response to the information submitted by Geographic Strategies with respect to these files by 5:00 p.m. EST on December 18, 2019. The Court, upon receipt and consideration of the foregoing, shall determine whether an ongoing protective order is warranted for these files. These files shall remain designated as "Confidential," in accordance with the parties' existing Consent Protective Order, until further order of the Court.

5. This order is not intended to preclude or impair any other court of competent jurisdiction from exercising its discretion and compelling inspection,

production or dissemination of any of the Hofeller files in connection with any other matter.

6. Neither is this order intended to contradict any existing order or ruling issued by any other court of competent jurisdiction with respect to the confidentiality, use or ownership of any of the Hofeller files.

So ORDERED, this the 4th day of November, 2019.



Vince M. Rozier, Jr.
Vince M. Rozier, Jr.
Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the persons indicated below by emailing a copy thereof to the address below, in accordance with the ~~March~~ 13, 2019 Case Management Order:

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This the 4th day of November, 2019.



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